Supreme Court, U.S.
FILED

No. 09-1029

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In The
Supreme Court of the United States

JOE NEWTON,

Petitioner,

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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February 22, 2010

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QUESTIONS PRESENTED FOR REVIEW

Whether a circuit court errs under this Court's standards for issuing a certificate of appealability when a district court's ruling that a defendant's claim was not cognizable on habeas review was, at the very least, debatable.

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OPINIONS BELOW

The order of the Ashley County, Arkansas Circuit Court is unreported. The Arkansas Supreme Court's opinion is reported at Newton v. State, 366 Ark. 587, 237 S.W.3d 451 (2006). The orders of the U.S. District Court for the Eastern District of Arkansas denying Joe Newton's petition for writ of habeas corpus under 28 U.S.C. § 2254, Newton v. Norris, 2009 U.S. Dist. LEXIS 44650 (E.D. Ark. May 28, 2009), and denying his request for certificate of appealability, Newton v. Norris, 2009 U.S. Dist. LEXIS 59274 (E.D. Ark. June 29, 2009), are not reported. The Eighth Circuit Court of Appeals's decision denying Mr. Newton's application for certificate of appealability, Newton v. Norris, No. 09-2522 (8th Cir., Nov. 25, 2009), is also unreported.

STATEMENT OF THE BASIS FOR JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 2254, as Mr. Newton timely filed his habeas petition under that statute, noting the state court's rulings resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by this Court, and resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

The Eighth Circuit had jurisdiction under 28 U.S.C. § 2253, as the district court denied Mr. Newton's timely request for certification for appeal. This Court has jurisdiction under 28 U.S.C. § 1254(1), as the Eighth Circuit rendered a final decision on this civil habeas action.

STATUTORY PROVISION INVOLVED IN THIS CASE

> A certificate of appealability may issue * * * only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2253(c)(2).

STATEMENT OF THE CASE

In April 2005, an Ashley County, Arkansas jury found Mr. Newton guilty of murder and sentenced him to life imprisonment without parole. On appeal to the Arkansas Supreme Court, Mr. Newton raised one issue—that the trial court had erred in denying his motion to suppress evidence seized from his apartment as a result of a warrantless search.

At the suppression hearing, the trial court had learned the following: Police were called to an apartment complex and had observed a body lying on the concrete. Officers saw that a mat was under the body and that "drag marks" and ran from body to the door of a certain apartment. An officer spotted Mr. Newton looking out of that apartment.

Without a warrant or applicable warrant exception, that officer entered the apartment and watched Mr. Newton while other officers conducted investigation. While in the apartment, the officer observed some broken glass in the living room, and noticed a smell that caused him to think someone had been washing clothes or dishes. Another officer smelled the odor of bleach.

As a result of the investigation, including what officers viewed in the apartment, the police arrested and searched Mr. Newton. The police found a couple of cell phones and a switch-blade knife.

After Mr. Newton was arrested, searched, and placed in a patrol car, yet another officer entered the apartment. The officer could see into the apartment unit through the glass storm door, and that he saw blood on the threshold and on the carpet. Because he saw "what could be blood on the floor inside the storm door," he "went in to check." Inside the apartment, he "just went wherever" he found blood. He found a pair of shoes from the bedroom, rugs from the living room and kitchen, drops of blood in the bathroom, and the smell of bleach throughout the residence. An officer videotaped the inside of the apartment.

The police later obtained a warrant to search the apartment. In obtaining the warrant, however, the police cited evidence they had obtained only after physically entering the apartment and that was not (and could not have been) viewed from outside the apartment. Thus, the later-obtained warrant was only valid if the search of the apartment had been legal in the first place.

In his motion to suppress, Mr. Newton asserted that no exception to the warrant requirement was applicable under the facts of his case. The trial court denied Mr. Newton's motion to suppress, finding that the shoes, rugs and videotape of the scene were taken "under the plain view exception to the Fourth Amendment's warrant requirements."

On appeal to the Arkansas Supreme Court, Mr. Newton noted that the trial court had erred in using the "plan view" exception to the warrant requirement because the officers only obtained the evidence, such as the shoes, rug, and videotape, after *physically entering* the apartment. Briefing focused on the facts and law as to the plain view exception.

The state's highest court agreed that the trial court's reliance upon the plain view doctrine was troubling and concerning in light of the facts of the case. But that Arkansas Supreme Court nevertheless affirmed the trial court, pointing to a different legal theory—inevitable discovery. The court concluded that, "even if police had not illegally entered Newton's apartment, they would have later entered under a valid search warrant and inevitably discovered the alleged tainted evidence."

But just like the police had done in later obtaining a warrant, the Arkansas Supreme Court cited evidence and facts only known to police because they had illegally entered the apartment. Thus, Mr. Newton timely filed a petition for writ of habeas corpus under 28 U.S.C. § 2254.

In the petition, Mr. Newton argued that the Arkansas Supreme Court reached a decision that was contrary to, or an unreasonable application of, federal law concerning inevitable discovery and had reached a decision that was based upon an unreasonable determination of the facts. The core argument was that the state's highest court had wrongly applied the inevitable discovery doctrine. The Arkansas Supreme Court's decision expressly cited evidence police had illegally obtained *during* the search and, thus, under

this Court's precedent, could not be used to support the inevitable discovery doctrine.

The district court denied the petition on the grounds that Mr. Newton had an opportunity for full and fair litigation of his Fourth Amendment claims in state court. Mr. Newton appealed to the Eighth Circuit Court of Appeals.

Mr. Newton submitted that the district court's ruling had been at least debatable. After all, briefing to the Arkansas Supreme Court had focused on the facts and law relevant to the plain view exception to the warrant requirement, while the state's highest court had summarily affirmed based upon (incorrect) application of the inevitable discovery doctrine. Accordingly, the state supreme court's error had not been fully or fairly litigated. Instead, it was an eleventh-hour ruling on a surprise ground, and it was wrong. The Eighth Circuit disagreed, and denied Mr. Newton's application for a certificate of appealability.

Mr. Newton now timely petitions this Court for review. He remains incarcerated.

ARGUMENT ADDRESSING REASONS FOR ALLOWING THE WRIT

The Eighth Circuit's Refusal to Certify Issues for Appeal Conflicts with this Court's Precedent, as the District Court's Ruling that Mr. Newton's Habeas Petition was Barred was, at the Very Least, Debatable.

Under Supreme Court Rule 10, the Court will review an important question of federal law that

conflicts with relevant decisions of this Court. S. Ct. R. 10(c). The Court will also review a decision of a circuit court if it that decision is in conflict with the decision of another circuit on the same important matter. S. Ct. R. 10(a).

In this case, the Eighth Circuit's decision conflicts with this Court's decisions in Miller-El v. Cockrell, 537 U.S. 322, 123 S. Ct. 1029 (2003), and Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000), as the district court's ruling that Mr. Newton's habeas petition was not cognizable was, at the very least, debatable. In turn, the district court's decision was debatable because it applied the Eighth Circuit's questionable interpretation of this Court's decision in Stone v. Powell, 428 U.S. 465, 96 S. Ct. 3037 (1976)—an interpretation that conflicts with the views of sister circuit courts and broadly precludes federal habeas review of state court rulings that are clearly erroneous based upon the state court's own record.

A. The Circuit Courts are Required to Certify Issues for Appeal when the Defendant Demonstrates that the District Court's Decision as to a Constitutional Question was Simply "Debatable."

To demonstrate that the issuance of a certificate of appealability is appropriate, a defendant need only make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). An applicant has made a "substantial showing" where "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to

proceed further.'" Slack, 529 U.S. at 484 (quoting Barefoot v. Estelle, 463 U.S. 880, 893 & n.4, 103 S. Ct. 3383 (1983)).

The question for a circuit court reviewing a habeas petitioner's appeal is not whether the petitioner's argument will ultimately succeed. The question is simply whether the district court's ruling was debatable. In Miller-El, the state had argued that a circuit court had rightfully denied an application for certificate of appealability because the petitioner was not going to be able to win the appeal on the merits. The Court responded, "That may or may not be the case. It is not, however, the question before us." Id. Instead, the "inquiry asks only if the District Court's decision *was debatable*." Id. (emphasis added).

B. The Circuit Courts Differ in Interpreting the Meaning of an "Opportunity for Fully and Fair Litigation" of Fourth Amendment Issues, with the Eighth Circuit Refusing to Look to the State Court Record for Clear Error.

In Stone v. Powell, the Court established a general rule that criminal defendants may not seek collateral review of Fourth Amendment exclusionary rule claims under 28 U.S.C. § 2254 if they received "an opportunity for full and fair litigation of" their Fourth Amendment claims in state court. Id. at 494. The Stone Court based its decision on a concern for judicial economy, stating that the "justification [for the exclusionary rule] becomes minimal where * * * a prisoner * * * previously has been afforded the opportunity for full and fair consideration of his

search-and-seizure claim at trial and on direct review." Id. at 486.

The Court has not elaborated on the meaning of an "opportunity for full and fair litigation." Willett v. Lockhart, 37 F.3d 1265, 1270 (8th Cir. 1994) (en banc); Turentine v. Miller, 80 F.3d 222, 224 (7th Cir. 1996). But the Stone Court's opinion provided some clues as to its meaning.

After referring to an "opportunity for full and fair litigation," the Stone Court cited Townsend v. Sain, 372 U.S. 293, 83 S. Ct. 745 (1963). In Townsend, the Court discussed when an evidentiary hearing is necessary in a federal habeas corpus proceeding.[1] One circumstance where an evidentiary hearing is necessary is when "the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing." Id. at 313. The Townsend Court found that "there cannot even be the semblance of a full and fair hearing unless the state court actually reached and decided the issues of fact tendered by the defendant." Id. at 313-14. "No relevant findings have been made unless the state court decided the constitutional claim tendered by the defendant on the merits." Id. at 314.

Pointing to Townsend, the Seventh Circuit narrowly interprets Stone as barring claims if the petitioner simply argues that the state court made a

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[1] The Court overruled a different aspect of the Townsend opinion in Keeney v. Tamayo-Reyes, 504 U.S. 1, 112 S. Ct. 1715 (1992).

mistake in applying Fourth Amendment law.[2] Turentine, 80 F.3d at 226; Pierson v. O'Leary, 959 F.2d 1385, 1392 (7th Cir 1992). Under Weber v. Murphy, 15 F.3d 691 (7th Cir.), *cert. denied*, 511 U.S. 1097, 114 S. Ct. 1865 (1994), to determine whether a federal habeas petitioner has received a full and fair opportunity to litigate his Fourth Amendment claim, the Seventh Circuit first looks to whether the petitioner "clearly informed the state court of the factual basis for the claim" and "argued that those facts constitute" the constitutional error. Id. at 694. If so, the Seventh Circuit looks to the state court record and considers whether "the state court has carefully and thoroughly analyzed the facts and * * * applied the proper constitutional case law." Id. If not, the petitioner had not received a full and fair opportunity to litigation the Fourth Amendment error, and Stone does not bar review. Turentine, 80 F.2d at 224-25.

With this standard, the Seventh Circuit has "sought to explicate what the Supreme Court recognized in Stone as a very narrow exception to the general rule that a habeas petition may not bring Fourth Amendment claims." Id. at 226. That exception allows "habeas review of Fourth Amendment claims" in "instances where the state court made an egregious error (e.g., failed to apply Supreme Court precedent directly on point after the argument was clearly presented), thus effectively depriving the petitioner of

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[2] At least one circuit beside the Eighth Circuit has found that Stone did not necessarily intend to incorporate the full extent of the Townsend Court's definition of full and fair hearing. See Palmigiano v. Houle, 618 F.2d 877, 881 (1st Cir.), *cert. denied*, 449 U.S. 901, 101 S. Ct. 272 (1980).

the ability to vindicate his federal rights in state court." Id.

The Eighth Circuit has adopted a stricter standard, interpreting Stone to hold that federal courts should not review Fourth Amendment claims raised in § 2254 petitions unless the defendant was prevented from litigating his claims in state court "because of an unconscionable breakdown in the underlying [state judicial] process." Willett, 37 F.3d at 1271 (quoting Capellan v. Riley, 975 F.2d 67, 70 (2nd Cir. 1992)). And as the district court in this case noted below, the Eighth Circuit directs its district courts "not to consider whether full and fair litigation of the claims *in fact* occurred." Willett, 37 F.3d at 1273 (emphasis in original). Citing Willett, the district court below noted it had been directed "to abstain from reviewing the record to determine whether the" Arkansas Supreme Court's "findings of fact are supported by the record."

C. Under Seventh Circuit Case Law, the District Court would have Reviewed the State Court Record in Mr. Newton's Case and Found that the State Supreme Court Erroneously Applied the Inevitable Discovery Doctrine.

Application of the Eighth Circuit's Willett view of Stone in this case, rather than the Seventh Circuit's Weber, made a tremendous difference in this case. Had the district court applied Weber, it would have reviewed the record and found that the state courts' findings of fact were not supported by the record, thereby removing the Arkansas Supreme Court's foundation for affirming what was otherwise an admitted Fourth Amendment violation.

Mr. Newton had raised a strong meritorious claim that the trial court had wrongly denied his motion to suppress, as the police had illegally entered his apartment, and the trial court had wrongly applied the plain view exception to allow introduction of the illegally-obtained evidence at trial. The Supreme Court of Arkansas ruled that the trial court had erred by applying the plain view exception in the case. Rather than remand, the state's high court affirmed by concluding that the police would have discovered the evidence through the later-obtained warrant.

The problem was that the inevitable discovery doctrine could not apply as the Arkansas Supreme Court suggested. The facts to which the court pointed were facts that the police discovered only after illegally entering the apartment and, thus, those facts could not have been legally cited in support of the later-obtained warrant. Under Weber, the district court would have found that Mr. Newton had clearly argued in the state courts that, under the facts of his case, the plain view doctrine did not apply, and that his Fourth Amendment rights had been violated. See Weber, 15 F.3d at 694.

The district court then would have looked to the state court record to see whether the Arkansas Supreme Court carefully and thoroughly analyzed the facts and applied the proper constitutional case law. See id. The district court would have found that the Arkansas Supreme Court wrongly applied Nix v. Williams, 467 U.S. 431, 104 S. Ct. 2501 (1984), to the facts of the case. Unfortunately, applying Willett, the district court could refuse to review the state court record and, instead, summarily conclude that Mr. Newton's claim was not cognizable.

D. Because Application of Willett Enabled the District Court to Refuse to Review the State Court Record and Discover the Arkansas Supreme Court's Clear Error and Failure to Correct an Admitted Fourth Amendment Violation, the Ruling Below was Certainly Debatable.

In this case, the Arkansas Supreme Court recognized that a Fourth Amendment error had occurred, and that the trial court had wrongly applied the plain view doctrine. The district court below appeared to recognize that the Arkansas Supreme Court wrongly applied the inevitable discovery doctrine to ignore those errors. But citing Willet, the district court was able to sweep these acknowledged errors under the rug.

On appeal to the Eighth Circuit, Mr. Newton challenged the district court's conclusion that he had an opportunity for full and fair litigation of the claims. He expressly noted that the state court record supported his claims that the Arkansas Supreme Court erred in applying Nix and the inevitable discovery doctrine. Thus, he submitted, the district court's decision was at least debatable.

Because the Eighth Circuit refused to accept this debatable issue for appeal and, instead, considered whether it would have ultimately granted relief under its interpretation of Stone, the court of appeals erred under the Court's decisions in Slack and Miller-El. Mr. Newton notes that the Eighth Circuit's judgment did not cite the standards of § 2253, Slack, or Miller-El. Thus, by refusing to certify the matter for appeal, the Eighth Circuit has held Mr. Newton to a higher

standard that allowable under § 2253, Slack and Miller-El. For these reasons, Mr. Newton asks the Court to grant his petition under Supreme Court Rule 10(c) and either order full briefing or remand the matter to the Eighth Circuit with instructions that the court of appeals certify the issue for full briefing on appeal.

CONCLUSION

Petitioner Joe Newton submits that his petition for writ of certiorari should be granted for the compelling reasons noted above, including that the Eighth Circuit's decision conflicts with this Court's precedent and that the underlying Eighth Circuit case law conflicts with case law of other circuits on the application of Stone v. Powell. Mr. Newton respectfully asks the Court to order full briefing or remand the matter to the Eighth Circuit with instructions to certify his substantive issues for appeal.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 09-2522

[Filed November 25, 2009]

Joe Newton,	)
	)
Plaintiff-Appellant	)
	)
v.	)
	)
Larry Norris, Director, Arkansas Department of Corrections,	)
	)
Defendant-Appellee	)
	)

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:09-cv-00055-HDY)

JUDGMENT

Before BYE, MELLOY, and COLLOTON, Circuit Judges

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district

court, and the application for a certificate of appealability is denied. The appeal is dismissed.

November 25, 2009

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

No. 5:09CV00055 HDY

[Filed June 29, 2009]

JOE NEWTON
PETITIONER

v.

LARRY NORRIS, Director of the
Arkansas Department of Correction
RESPONDENT

ORDER

Petitioner Joe Newton ("Newton") has filed the pending motion for a certificate of appealability pursuant to 28 U.S.C. 2253(c). See Document 13.[1] For

[1] 28 U.S.C. 2253(c) provides the following:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from–

(A) the final order in a habeas corpus proceeding in which the

the reason that follows, the motion is denied. In Slack v. McDaniel, 529 U.S. 473, 484 (2000), the United States Supreme Court articulated the following standard for reviewing a request for a certificate of appealability:

> Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy [section] 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and

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detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

> that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

See also Khaimov v. Christ, 2002 WL 1677677 (8th Cir. July 25, 2002).[2]

The record reflects that Newton raised two Fourth Amendment claims in his petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. The Court found that the claims were not cognizable in this proceeding in accordance with Stone v. Powell, 428 U.S. 465 (1976). As a result, his petition was dismissed with prejudice.

The Court has thoroughly reviewed the motion at bar. Assuming Newton's claims were dismissed on the merits, he has not shown that reasonable jurists would find the assessment of his constitutional claims debatable or wrong.[3] Assuming they were dismissed on a procedural ground, he has not shown that jurists of reason would find it debatable whether the petition

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[2] "[W]hen a claim is denied on procedural grounds, our reading of Slack is that: 1) if the claim is clearly procedurally defaulted, the certificate [of appealability] should not be issued; 2) even if the procedural default is not clear, if there is no merit to the substantive constitutional claims, the certificate [of appealability] should not be issued; but 3) if the procedural default is not clear and the substantive constitutional claims are debatable among jurists of reason, the certificate [of appealability] should be granted." See Id. at 4.

[3] The Court need not determine whether the dismissal of Newton's claims in accordance with Stone v. Powell was a dismissal on the merits or a dismissal on a procedural ground. The result is the same under either analysis.

stated valid claims of the denial of constitutional rights and that jurists of reason would find it debatable whether the Court was correct in its procedural rulings. The Court therefore finds that Newton's motion for a certificate of appealability should be, and is, denied.

IT IS SO ORDERED this 29 day of June, 2009.

/s/
UNITED STATES MAGISTRATE JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

No. 5:09CV00055 HDY

[Filed May 28, 2009]

JOE NEWTON PETITIONER	)
v.	)
LARRY NORRIS, Director of the Arkansas Department of Correction RESPONDENT	)

MEMORANDUM OPINION AND ORDER

STATE COURT PROCEEDINGS. The Arkansas Supreme Court found that the following facts gave rise to petitioner Joe Newton ("Newton") being charged with capital murder in Ashley County, Arkansas, Circuit Court:

> In the late hours of December 13, 2003, or the very early hours of December 14, 2003, Greg Parker was stabbed to death. On December 14, 2003, Crossett police received a 911-call informing them that there was a body at the

apartment complex located at 401 Main Street. Officer David Tumey was among the first officers to arrive. He testified that they found a black male lying on his back in front of an apartment. Tumey checked the man for vital signs and found none. Officer Cliff Bailey arrived shortly thereafter and took command of the crime scene. Bailey testified that a man was pacing nearby and talking nervously. The man identified himself as Terrance Adkins and identified the dead man as Greg Parker.

Officer Fred Hogan was also present at the crime scene and testified that there was some type of a mat lying under the body and what appeared to be marks on the concrete from the body leading back toward a nearby apartment door. Officer Bailey testified that there was a "bloody drag trail" from the body to the door of a nearby apartment. According to Officer Tumey, there was a "blood path" leading from the body to apartment A-3. The photographs and crime scene video clearly show a swath of blood leading from the body to apartment A-3, which was Newton's apartment.

Bailey testified that as he spoke with Adkins, Newton was standing behind a storm door just inside the doorway of his nearby apartment. According to Hogan, Bailey entered Newton's apartment and asked Hogan to follow him. They took Adkins inside Newton's apartment with them. Hogan was directed by Bailey to watch Newton while Bailey spoke to Adkins. At this time, Newton was seated at his kitchen table. After discussing the presence of

> the body with both Adkins and Newton, Bailey directed Hogan to take Adkins and Newton outside and place them in police cars. Each was informed that he was not under arrest.
>
> The scene was secured at this time. Officer Harold Pennington arrived and examined the scene near the body. He then observed spots of blood on the floor of Newton's apartment that he was able to see through Newton's storm door. Pennington entered the apartment and followed the spots of blood that took him into several rooms. Pennington videotaped the area outside and inside the apartment including floors, walls, and various objects on which blood could be seen, as well as damage done to the apartment such as broken glass in the living room. He seized an area rug from the living room and a pair of shoes from a bedroom. On December 15, 2003, Pennington appeared in court seeking a search warrant and offering as evidence in support of issuance of the warrant, the seized items and the videotape, along with other evidence such as the blood trail to Newtons' door. Pennington obtained a search warrant which he then executed on December 17, 2003.

See Newton v. State, 366 Ark. 587, 237 S.W.3d 451, 452-453 (2006).

Newton filed a motion to suppress the searches of his apartment that occurred on December 14, 2003, and again on December 17, 2003. The state Supreme Court found the following with regard to his motion to suppress:

In his motion to suppress, Newton argued that the search of his residence on December 14, 2003, and the search of his residence on December 17, 2003, were carried out in violation of the Fourth Amendment to the United States Constitution. At the hearing, Newton argued that the police searched his home without a warrant on December 14, 2003, in violation of his constitutional rights. Newton argued that this illegal search on December 14, 2003, tainted all evidence discovered and seized that night. He further argued that the State relied on the items illegally obtained on December 14, 2003, as evidence supporting issuance of the search warrant on December 15, 2003. This, Newton argue[d], means that all items seized pursuant to the search warrant were also tainted. He thus argued that all the seized evidence must be suppressed, or in other words, excluded at trial.

...

However, the State argued that there was no illegal search giving rise to exclusion because the evidence seized on December 14, 2003, was in plain view; therefore, the search was not illegal, and the exclusionary rule did not apply.

...

The circuit court found that the plain-view doctrine applied. The court noted that there was a blood trail to Newton's door, and that blood could be seen inside of Newton's apartment. Based on the blood seen inside the apartment,

> the court concluded that under the plain-view doctrine, the search was permissible. ....

See Id., 237 S.W.3d at 453.

Newton was later tried and convicted of capital murder. He was sentenced to life in prison without parole in the custody of respondent Larry Norris ("Norris").

Newton appealed his conviction. On appeal, he raised a single claim, that being, a claim that his motion to suppress was erroneously denied. The state Supreme Court found that the trial court judge had properly denied the motion to suppress but did so for the wrong reason; the state Supreme Court specifically found as follows:

> Because we have some misgivings about approving a warrantless entry under the facts of this case, our preference is to affirm for an alternative reason. The [trial] court erred in its analysis. However, as the State argues, where the [trial] court reached the correct result but for the wrong reason, we will not reverse the decision. ....
>
> ...
>
> In the present case, upon arriving at the scene, police found a body lying on a mat that had apparently been used to move the body. A blood trail stretched from the body to Newton's front door. There were no blood spatters on the walls or in the area surrounding the body, even though there were copious amounts of blood on

the body. This gave police reason to believe that the death may have occurred elsewhere than at the location where the body was found. Through Newton's storm door, police could see blood on the floor inside his apartment. In addition, Newton had a cut on his leg. There was certainly reason to believe that a crime had been committed, and there was reason to believe that evidence concerning the crime would be found in Newton's apartment. However, the police did not seek a warrant and instead entered Newton's apartment without a warrant. After seizing the area rug and shoes, and taking the videotape, the search was terminated that night for various reasons, including procurement of a search warrant.

At the probable-cause hearing, the above-noted evidence as to the condition of the body and conditions near the body, as well as the blood trail leading to Newton's door, were discussed and considered. While other matters such as conditions found in the apartment during the illegal search were discussed, evidence present outside the apartment, including the location of the body, the "bloody-drag trail," and blood visible on the floor inside the apartment, established probable cause to search Newton's apartment. While we have misgivings about the warrantless search on December 14, 2003, it was terminated with the intent of obtaining the search warrant, which was issued based on adequate probable cause. Even if police had not illegally entered Newton's apartment, they would have later entered under a valid search warrant and

> inevitably discovered the alleged tainted evidence. The [trial] court reached the correct result and we affirm.

See Id, 237 S.W.3d at 454-455.

Newton thereafter filed a petition for post-conviction relief pursuant to Arkansas Rule of Criminal Procedure 37. In the petition, he raised two claims, those being, (1) the evidence supporting his conviction was not sufficient; and (2) ineffective assistance of counsel as a result of counsel's failure to: "(a) file a motion in limine concerning the suppression of evidence so that the decision of the [trial] court on that matter could have been appealed before trial proceedings continued, and (b) ... argue that the crime scene and evidence may have been tainted." See Document 1 at 3. Notwithstanding Newton's assertions of error, his petition was denied. His first claim was rejected because it was a direct attack on his conviction and thus not a proper claim in a post conviction proceeding; his second claim was rejected because he had raised it on direct appeal and could not re-argue it in a post-conviction proceeding.

Newton appealed the denial of his petition. The state Supreme Court found no reversible error and affirmed the denial of his petition. See Newton v. State, 2008 WL 1748278 (Ark.S.Ct. April 17, 2008).

During the pendency of Newton's first post-conviction proceeding, he filed a second petition for post-conviction relief pursuant to Arkansas Rule of Criminal Procedure 37. In that petition, he challenged his attorney's representation. The parties agree that

the petition is still pending in Ashley County, Arkansas, Circuit Court.

FEDERAL COURT PROCEEDINGS. Newton commenced the proceeding at bar by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. In the petition, he raised two claims, those being: (1) "[t]he Arkansas Supreme Court's conclusions to deny ... Newton's Fourth Amendment claims were contrary to or an unreasonable application of clear Supreme Court case law as to the theory of inevitable discovery," see Document 1 at 5; and (2) "[t]he finding of facts by the Arkansas Supreme Court affirming [the] denial of the motion to suppress was based upon an unreasonable determination of [the] facts based upon the record," see Document 1 at 7.

Norris filed a response to the petition. He maintained that Newton's Fourth Amendment claims are not cognizable in a federal habeas corpus proceeding because they are barred from federal court review by Stone v. Powell, 428 U.S. 465 (1976). For that reason, Norris maintained that the petition should be dismissed.

Newton filed a reply to Norris' response. In the reply, Newton first addressed the question of whether his Fourth Amendment claims are barred from federal court review by Stone v. Powell. He maintained that Stone v. Powell does not bar consideration of his claims because he was not afforded a full and fair opportunity to litigate the claims. He specifically maintained that he was not afforded a full and fair opportunity to litigate the claims when the state Supreme Court affirmed the denial of his motion to suppress on a ground not relied upon by the trial court

judge and not fully briefed by the parties on appeal.[1] Newton additionally maintained that the adjudication of his claims resulted in a decision that was contrary to, or involved an unreasonable application of, Nix v. Williams, 467 U.S. 431 (1984), and/or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented.

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[1] With regard to that assertion, Newton noted that the trial court judge denied the motion to suppress on the ground that the evidence was in the plain view of the police officers at the scene of the murder. The state Supreme Court rejected that basis for denying the motion to suppress, finding instead that the discovery of the evidence was inevitable. In the concluding portion of Newton's reply, he provided the following summary of his assertion:

> In short, ... Newton had no reasonable grounds for believing that the Arkansas Supreme Court would deny relief on inevitable discovery. This is because the doctrine *simply did not apply*. No one could have reasonably foreseen that the state[] supreme court would have applied the inevitable discovery doctrine and, to do so, would rely upon evidence that was tainted. It made no sense. Of course, had ... Newton reasonably believed the Arkansas Supreme Court was going to deny relief upon inevitable discovery, or if the [trial] court had raised this issue in the slightest (making the issue something that may have been the grounds for the [trial] court's decision and, thus, an important legal issue to brief in detail), he would have spent more than two paragraphs addressing the matter. But under these facts, the state courts did not provide ... Newton with full and fair litigation of the relevant Fourth Amendment arguments.

See Document 8 at 8 (emphasis in original).

EXHAUSTION. Having completely reviewed the parties' submissions, the Court begins by briefly addressing the question of whether Newton has exhausted his available state remedies.[2] The parties agree that his second petition for post-conviction relief is still pending in Ashley County, Arkansas, Circuit Court. Neither of the claims at bar, though, were raised in that petition. The claims, which were combined into a single claim on direct appeal, were instead fully litigated in the state trial and appellate courts. The Court therefore finds that the two claims raised in this petition have been fully exhausted.

STONE V. POWELL. Stone v. Powell provides that a Fourth Amendment claim is not cognizable in a federal habeas corpus proceeding if the state afforded the petitioner an opportunity for full and fair litigation of the claim. In Willett v. Lockhart, 37 F.3d 1265 (8th Cir. 1994), cert. denied, 514 U.S. 1052 (1995), the Court of Appeals adopted a two-part test for determining whether a petitioner had an opportunity for full and fair litigation of a Fourth Amendment claim in state courts. "Under this test, a Fourth Amendment claim is Stone-barred, and thus unreviewable by a federal habeas courts, unless either the state provided no procedure by which the prisoner could raise his Fourth Amendment claim, or the prisoner was foreclosed from using that procedure because of an unconscionable breakdown in the system." See Id. at 1273.

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[2] "The doctrine of exhaustion prescribes that 'as a matter of comity, federal courts should not consider a claim in a habeas corpus petition until after the state courts have had an opportunity to act.'" See Mellott v. Purkett, 63 F.3d 781, 784 (8th Cir. 1995) [quoting Rose v. Lundy, 455 U.S. 509, 515 (1982)].

With regard to the first part of the Willett v. Lockhart test, it is clear that the State of Arkansas provided Newton with a procedure to raise his Fourth Amendment claims by permitting the filing of a trial court motion to suppress and permitting appellate review of any adverse ruling. That part of the test requires nothing more.[3]

With regard to the second part of the Willett v. Lockhart test, it is difficult to see how Newton was foreclosed from using the aforementioned procedure because of an unconscionable breakdown in the system. It may be true that the state Supreme Court affirmed the denial of his motion to suppress on a ground not relied upon by the trial court judge and not fully briefed by the parties on appeal, but that fact does not establish an unconscionable breakdown in the system for at least two reasons. First, the Court knows of nothing that would prevent an appellate court from affirming the ruling of a lower court on a ground different than that relied upon by the lower court. Second, Newton was not prevented in any way from briefing the inevitable discovery issue on appeal. In fact, he briefed the issue but not to the extent he now wishes he had. He simply disagrees with the appellate court ruling on his motion to suppress, and it is clear that the "mere disagreement with the outcome of a state court ruling is not the equivalent of an unconscionable breakdown in the [system]." See

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[3] "The federal courts on habeas review of [Fourth Amendment] claims are not to consider whether full and fair litigation of the claims *in fact* occurred in the state courts, but only whether the state provided an opportunity for such litigation." See Willett v. Lockhart, 37 F.3d at 1273 (emphasis in original).

Chavez v. Weber, 497 F.3d 796, 802 (8th Cir. 2007) (internal quotations omitted).

Notwithstanding the foregoing, it is possible to construe Newton's pleadings in such a manner that he believes the state courts of Arkansas failed to adequately develop the record on his Fourth Amendment claims and did not afford him an opportunity for full and fair litigation of his claims. There is at least one problem with his assertion. Willett v. Lockhart provides that the federal courts are to abstain from reviewing the record to determine whether the state courts' findings of fact are supported by the record.[4] Accordingly, the Court will abstain from reviewing the record.

The Court finds that Newton had an opportunity for full and fair litigation of his Fourth Amendment claims in state court. As a result, they are not cognizable in this proceeding in accordance with Stone v. Powell.

CONCLUSION. Having found that Newton's Fourth Amendment claims are not cognizable in this proceeding, his petition should be, and is, dismissed with prejudice. Judgment will be entered for Norris, and all requested relief is denied.

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[4] "We think that the Stone opinion, which clearly limits the scope of federal habeas review as to Fourth Amendment claims, was intended to short-circuit the district court's review of the record in such cases as well as to avoid the court's conducting anew an evidentiary hearing on the claim." See Willett v. Lockhart, 37 F.3d at 1271.

IT IS SO ORDERED this 28 day of May, 2009.

/s/
UNITED STATES MAGISTRATE JUDGE

APPENDIX D

SUPREME COURT OF ARKANSAS

No. CR 05-1247

[Filed June 22, 2006]

Joe NEWTON)
v.)
STATE of Arkansas)
)

S.W.3d

Opinion

EVIDENCE – INEVITABLE-DISCOVERY RULE – DENIAL OF MOTION TO SUPPRESS AFFIRMED. – Where upon arriving at the scene, police found a body lying on a mat that had apparently been used to move the body, a blood trail stretched from the body to appellant's front door, and blood visible on the floor inside appellant's apartment, and where the warrantless search of appellant's apartment was terminated with the intent of obtaining a search warrant, which was issued on adequate probable cause, the supreme court concluded that even if police had not illegally entered appellant's apartment, they would have later entered under a valid search warrant and inevitably discovered the alleged tainted evidence; thus, the circuit court reached

the right result in denying appellant's motion to suppress and the supreme court affirmed.

Appeal from Ashley Circuit Court; *Samuel B. Pope*, Judge; affirmed.

Robinson & Associates, P.A., by: *Greg Robinson*, *Luke Zakrzewski*, and *Bryan Achorn*, for appellant.

Mike Beebe, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.

JIM HANNAH, Chief Justice. Joe Gene Newton appeals his conviction of capital murder and sentence of life without parole. On appeal, Newton raises a single issue, which is whether the circuit court erred in denying his motion to suppress. We affirm Newton's conviction and sentence. Our jurisdiction is pursuant to Ark. Sup. Ct. R. 1-2(a)(2).

In the late hours of December 13, 2003, or the very early hours of December 14, 2003, Greg Parker was stabbed to death. On December 14, 2003, Crossett police received a 911-call informing them that there was a body at the apartment complex located at 401 Main Street. Officer David Tumey was among the first officers to arrive. He testified that they found a black male lying on his back in front of an apartment. Tumey checked the man for vital signs and found none. Officer Cliff Bailey arrived shortly thereafter and took command of the crime scene. Bailey testified that a man was pacing nearby and talking nervously. The man identified himself as Terrance Adkins and identified the dead man as Greg Parker.

Officer Fred Hogan was also present at the crime scene and testified that there was some type of a mat lying under the body and what appeared to be marks on the concrete from the body leading back toward a nearby apartment door. Officer Bailey testified that there was a "bloody drag trail" from the body to the door of a nearby apartment. According to Officer Tumey, there was a "blood path" leading from the body to apartment A-3. The photographs and crime scene video clearly show a swath of blood leading from the body to apartment A-3, which was Newton's apartment.

Bailey testified that as he spoke with Adkins, Newton was standing behind a storm door just inside the doorway of his nearby apartment. According to Hogan, Bailey entered Newton's apartment and asked Hogan to follow him. They took Adkins inside Newton's apartment with them. Hogan was directed by Bailey to watch Newton while Bailey spoke to Adkins. At this time, Newton was seated at his kitchen table. After discussing the presence of the body with both Adkins and Newton, Bailey directed Hogan to take Adkins and Newton outside and place them in police cars. Each was informed that he was not under arrest.

The scene was secured at this time. Officer Harold Pennington arrived and examined the scene near the body. He then observed spots of blood on the floor of Newton's apartment that he was able to see through Newton's storm door. Pennington entered the apartment and followed the spots of blood that took him into several rooms. Pennington videotaped the area outside and inside the apartment including floors, walls, and various objects on which blood could be

seen, as well as damage done to the apartment such as broken glass in the living room. He seized an area rug from the living room and a pair of shoes from a bedroom. On December 15, 2003, Pennington appeared in court seeking a search warrant and offering as evidence in support of issuance of the warrant, the seized items and the videotape, along with other evidence such as the blood trail to Newtons' door. Pennington obtained a search warrant which he then executed on December 17, 2003.

In his motion to suppress, Newton argued that the search of his residence on December 14, 2003, and the search of his residence on December 17, 2003, were carried out in violation of the Fourth Amendment to the United States Constitution. At the hearing, Newton argued that the police searched his home without a warrant on December 14, 2003, in violation of his constitutional rights. Newton argued that this illegal search on December 14, 2003, tainted all evidence discovered and seized that night. He further argued that the State relied on the items illegally obtained on December 14, 2003, as evidence supporting issuance of the search warrant on December 15, 2003. This, Newton argues, means that all items seized pursuant to the search warrant were also tainted. He thus argued that all the seized evidence must be suppressed, or in other words, excluded at trial.

> The exclusionary rule prohibits introduction into evidence of tangible materials seized during an unlawful search, *Weeks* v. *United States*, 232 U.S. 383 (1914), and of testimony concerning knowledge acquired during an unlawful search, *Silverman* v. *United States*, 365 U.S. 505 (1961).

> Beyond that, the exclusionary rule also prohibits the introduction of derivative evidence, both tangible and testimonial, that is the product of the primary evidence, or that is otherwise acquired as an indirect result of the unlawful search, up to the point at which the connection with the unlawful search becomes "so attentuated as to dissipate the taint," *Nardone* v. *United States*, 308 U.S. 338, 341 (1939). *See Wong Sun* v. *United States*, 371 U.S. 471, 484-485 (1963).

Murray v. United States, 487 U.S. 533, 536-37 (1988). This court has likewise held that "the exclusionary rule commands that where evidence has been obtained in violation of search and seizure protections, the illegally obtained evidence cannot be used at the trial of the defendant." *Griffin v. State*, 347 Ark. 788, 793, 67 S.W.3d 582, 585 (2002).

However, the State argued that there was no illegal search giving rise to exclusion because the evidence seized on December 14, 2003, was in plain view; therefore, the search was not illegal, and the exclusionary rule did not apply. Under the plain-view doctrine, "[w]hen police officers are legitimately at a location and acting without a search warrant, they may seize an object in plain view if they have probable cause to believe that the object is either evidence of a crime, fruit of a crime, or an instrumentality of a crime." *Fultz v. State*, 333 Ark. 586, 593, 972 S.W.2d 222, 224-25 (1998) (citing *Arizona v. Hicks*, 480 U.S. 321 (1987)).

The circuit court found that the plain-view doctrine applied. The court noted that there was a blood trail to

Newton's door, and that blood could be seen inside of Newton's apartment. Based on the blood seen inside the apartment, the court concluded that under the plain-view doctrine, the search was permissible. The plain-view doctrine is applicable if the officer has a lawful right of access to the object and if the incriminating nature of the object is readily apparent. *Williams v. State*, 327 Ark. 213, 939 S.W.2d 264 (1997). There must be a "lawful right of access to the object." *Fultz*, 333 Ark. at 593, 972 S.W.2d at 225 (citing *Horton v. California*, 496 U.S. 128 (1990)).

Because we have some misgivings about approving a warrantless entry under the facts of this case, our preference is to affirm for an alternative reason. The circuit court erred in its analysis. However, as the State argues, where the circuit court reached the correct result but for the wrong reason, we will not reverse the decision. *Flores v. State*, 348 Ark. 28, 69 S.W.3d 864 (2002).

The inevitable discovery rule applies to evidence that was illegally seized and provides that even though evidence is subject to suppression due to illegal conduct by police, it may still be admissible "if the State proves by a preponderance of the evidence that the police would have inevitably discovered the evidence by lawful means." *McDonald v. State*, 354 Ark. 216, 225, 119 S.W.3d 41, 47 (2003). The United States Supreme Court, in adopting the inevitable discovery rule, stated that "when . . . the evidence in question would inevitably have been discovered without reference to the police error or misconduct, there is no nexus sufficient to provide taint and the evidence is admissible." *Nix v. Williams*, 467 U.S. 431, 448 (1984). In *Nix*, Williams was convicted of

kidnapping and killing a child. While police were transporting Williams, they asked and obtained information from Williams that led them to the child's body. This was done in the absence of counsel; therefore, in *Nix*, a Sixth Amendment violation was at issue. The Court noted in *Nix* that at the time the information was obtained from Williams, a search was underway using a grid system that included the area where Williams indicated the body would be found. The Court concluded that had Williams not led police to the body, "the body would have inevitably been found." *Nix*, 467 U.S. at 450.

In the present case, upon arriving at the scene, police found a body lying on a mat that had apparently been used to move the body. A blood trail stretched from the body to Newton's front door. There were no blood spatters on the walls or in the area surrounding the body, even though there were copious amounts of blood on the body. This gave police reason to believe that the death may have occurred elsewhere than at the location where the body was found. Through Newton's storm door, police could see blood on the floor inside his apartment. In addition, Newton had a cut on his leg. There was certainly reason to believe that a crime had been committed, and there was reason to believe that evidence concerning the crime would be found in Newton's apartment. However, the police did not seek a warrant and instead entered Newton's apartment without a warrant. After seizing the area rug and shoes, and taking the videotape, the search was terminated that night for various reasons, including procurement of a search warrant.

At the probable-cause hearing, the above-noted evidence as to the condition of the body and conditions

near the body, as well as the blood trail leading to Newton's door, were discussed and considered. While other matters such as conditions found in the apartment during the illegal search were discussed, evidence present outside the apartment, including the location of the body, the "bloody-drag trail," and blood visible on the floor inside the apartment, established probable cause to search Newton's apartment. While we have misgivings about the warrantless search on December 14, 2003, it was terminated with the intent of obtaining the search warrant, which was issued based on adequate probable cause. Even if police had not illegally entered Newton's apartment, they would have later entered under a valid search warrant and inevitably discovered the alleged tainted evidence. The circuit court reached the correct result and we affirm.

Rule 4-3(h)

In compliance with Ark. Sup. Ct. R. 4-3(h), the record has been examined for all objections, motions, and requests made by either party that were decided adversely to Newton, and no prejudicial error has been found. *Holland v. State*, 365 Ark. 55, ___ S.W.3d ___ (2006).

Affirmed.

GLAZE, J., concurs.

APPENDIX E

FILED FOR RECORD
at 8:55 o'clock PM

APR 15 2005

BOB RUSH, CIRCUIT CLERK
By BR DC

Defendant's Full Name **NEWTON, JOE GENE**

JUDGMENT AND COMMITMENT ORDER
IN THE CIRCUIT COURT OF
ASHLEY COUNTY, ARKANSAS
TENTH JUDICIAL DISTRICT,
CRIMINAL DIVISION

On **4/15/2005** the defendant appeared before the Court, was advised of the nature of the charges(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

Defendant's Full Name . . : **NEWTON, JOE GENE**
Date Of Birth . . . . . : **[redacted]/1945**
Race . . . . . : **BLACK**
Sex . . . . . : **MALE**
SID # . . . . . : **635047**
Defendant's Attorney . . . : **GREG ROBINSON**

Prosecuting Attorney or
Deputy . . . . . : **FRANK SPAIN**
Change Of Venue From : **N/A**
Defendant was
represented by . . . . . : **RETAINED COUNSEL**
Defendant made a voluntary, knowing and intelligent waiver of the right to counsel: **N/A**

There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.O.C.) for the term specified on each offense shown below

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TOTAL NUMBER OF COUNTS: **1**

Offense # . . . . . : **1**
Docket # . . . . . : **CR 2003-227-1**
Arrest Tracking # : **792978**

A.C.A. # of Offense . . . . . : **5-10-101**
Name Of Offense . . . . . : **CAPITAL MURDER**
Seriousness Level Of
Offense . . . . . : **NA**
Criminal History Score . . : **1**
Presumptive Sentence . . . :
Sentence is a departure
from the sentencing grid : **NO**
Offense is a . . . . . : **FELONY**
Classification of Offense : **Y**

Sentence imposed . . . . . : **YES LIFE IMPRISONMENT WITHOUT PAROLE**

Suspended Imposition of Sentence . . . . . : **NO**

Defendant was sentenced as an Habitual Offender under A.C.A. 5-04-501, Subsections . . . . . : **(C)**

Sentence was Enhanced by A.C.A. . . . . : **N/A**

Offense Date . . . . . : **12/13/2003**

Number of Counts . . . . . : **1**

DEFENDANT WAS ON PAROLE AT TIME OF CONVICTION.

Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence **NO**

VICTIMS: OVER THE AGE OF 18 : 1

AGE N/A : 1

DEFENDANT WAS FOUND GUILTY AT A JURY TRIAL, AND SENTENCED BY THE JURY.

Indicate which sentences are to run consecutively:

Death Penalty: Execution Date:

Total time to serve on all offenses listed above: **0** months. **1 LIFE IMPRISONMENT(S) WITHOUT PAROLE**

Time is to be served at: **ARKANSAS DEPARTMENT OF CORRECTIONS**

Jail Time Credit: **0** days.

The Defendant was convicted of a target offense under the Community Punishment Act. The Court hereby orders that the Defendant be judicially transferred to

the Department of Community Punishment (D.C.P.). **NO**
Failure to meet the criteria or violation of the rules of the D.C.P. could result in transfer to the A.D.O.C.
Fines: Court Costs: **$ WAIVED**
DNA Sample Fee: **$ WAIVED**
A judgment of restitution is hereby entered against the Defendant in the amount and terms as show below:
Amount: Due immediately installments of:
Payment to be made to:
If multiple beneficiaries, give names and show payment priority:

Defendant is a Sex or Child Offender as defined in A.C.A. 12-12-903, and is ordered to complete the Sex Offender Registration Form: **NO**
Defendant is alleged to be a Sexually Violent Predator, and is ordered to undergo an evaluation at a facility designated by the Department of Correction pursuant to A.C.A. 12-12-918: **NO**
Defendant has committed an aggravated sex offense, as defined in A.C.A. 12-12-903. **NO**
Defendant was adjudicated guilty of a felony offense, a misdemeanor sexual offense, or a repeat offense (as Defined in A.C.A. 12-12-1103), and is ordered to have a DNA sample drawn at: **the A.D.O.C. YES**

Defendant was informed of the right to appeal: **YES**
Appeal Bond: **$ N/A**
The County Sheriff is hereby ordered to transport the Defendant to: **ADC**

The short report of circumstances attached hereto is approved.

Date: 4-15-05 Signature: /s/ Sam Pope
Circuit Judge: Sam Pope

I certify this is a true and correct record of this Court.

Date: 4-15-05 Circuit Clerk/~~Deputy~~: /s/ Bob Rush

(Seal)

Form Revised 7/2003